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Subject: **Application of: Ramesh Keshavara**
Serial Number: 09/932,338
Filed: August 17, 2001
For: Multiple panel airbag and method
Group Art: 3616

Date: April 12, 2004

Copies:

Pages: 8 including cover

Comments:

Mr. English:

Per your conversation with my assistant Kerry Lawter, please find an executed copy of the Brief on Appeal Under 37 CFR § 1.192 for the above referenced case. This Appeal Brief was originally filed on March 16, 2004. If you have any questions, please do not hesitate to contact me.

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Inventor(s): Keshavaraj

U.S. PTO Customer No. 25280
Case No.: 2013D

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Ramesh Keshavaraj
Serial Number: 09/932,338
Filed: August 17, 2001
For: Multiple Panel Airbag and Method
Group Art Unit: 3616
Examiner: English, Peter

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BRIEF ON APPEAL UNDER 37 CFR § 1.192

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Sir:

The following appeal brief is submitted pursuant to the Notice of Appeal filed on or about December 15, 2003 from the Final Action dated August 14, 2003.

REAL PARTY IN INTEREST

Milliken & Company, P.O. Box 1926, 920 Milliken Road, Spartanburg,
South Carolina 29303 (Assignee).

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RELATED APPEALS AND INTERFERENCES

None.

STATUS OF THE CLAIMS

Claims 68-76 have been rejected. A copy of the current claims is attached hereto as Exhibit A.

STATUS OF THE AMENDMENTS

An Amendment After Final filed November 11, 2003 was entered.

SUMMARY OF THE INVENTION

The present invention includes an airbag cushion for use in a vehicle restraint system, which in the most preferred embodiment includes two body panel sections of substantially similar geometry joined to one another by two substantially straight seams along corresponding lateral boundary edges. The boundary segments of the body panels that are not joined to one another are joined around the perimeter of a quadrilateral center panel by a series of substantially straight seams, thereby forming an inflatable cushion structure.

The assembly and construction of the cushion 10 according to the present invention is best understood through reference FIG. 2 and FIGS. 3A-3C. In the preferred practice of the present invention, substantially straight body seams 26 are applied along corresponding lateral boundary edges 34, 38 and 36, 40. The frontal impact center panel 20 is seamed along two opposing boundary edges 52, 54 to the substantially straight upper boundary edges 28, 30 of the body panel sections 22, 24. The intermediate boundary edges 42, 44, 46, 48 are seamed along the remaining boundary edges 56, 58 of the center panel 20 so as to form an enclosed structure. In the illustrated and potentially preferred embodiment, the total perimeter length of the center panel 20 is substantially equal to the combined lengths of the upper boundary edges 34, 38 and intermediate boundary edges 42, 44, 46, 48 of the body panel sections. The use of such corresponding length segments permits complete closure using substantially straight seams without the occurrence of substantial puckering which may result from excess material. In the most preferred embodiment, the upper and lower boundary edges 52, 54 of the center panel will be of substantially equal length to the upper boundary edges 36, 40 of the body panel sections while the first substantially straight intermediate boundary edges 42, 44

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of the body panel sections have a combined length which is substantially equal to the length of the first lateral boundary edge 56 of the center panel with the combined lengths of the second substantially straight intermediate boundary edges 46, 48 of the body panel sections being substantially equivalent to the length of the second center panel lateral boundary edge 58.

ISSUES

1. Whether or not claims 68-76 particularly point out and distinctly claim the subject matter which Applicant regards as the invention, in accordance with 35 U.S.C. 112, second paragraph.
2. Whether or not claims 68-76 are patentable over Nishimura et al. (JP 9-175300) or Nishimura et al. (JP 8-230592) in view of Yamaji et al. (US 5,316,337) and Bishop (US 5,520,414) et al.

GROUPING OF CLAIMS

Applicant respectfully submits that the claims stand or fall as the groups presented in this Appeal.

ARGUMENT

A. Claims 68-76 particularly point out and distinctly claim the subject matter which Applicant regards as the invention, in accordance with 35 U.S.C. 112, second paragraph.

Each of claims 68-76 were objected to or rejected under 35 U.S.C. 112. Applicant has amended the claims in the manner set forth in the Amendment After Final filed on November 11, 2003 in what is believed to be a substantially cosmetic manner consistent with the recommendations set forth by the Examiner. Accordingly, reconsideration and withdrawal of all outstanding objections and rejections based on claim form is requested at this time.

B. Claims 68-76 are patentable over Nishimura et al. (JP 9-175300) or Nishimura et al. (JP 8-230592) in view of Yamaji et al. (US 5,316,337) and Bishop (US 5,520,414) et al.

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Claims 68-76 were rejected under 35 U.S.C. 103(a) as being obvious over Nishimura et al. '300 (JP 9-175300) or Nishimura et al. '592 (JP8-230592) in view of U.S. Patent 5,316,337 to Yamaji et al. and U.S. Patent 5,520,414 to Bishop. Continued rejection on this basis is respectfully traversed and reconsideration is requested at this time.

As stated at MPEP §2143, in order to establish a *prima facie* case of obviousness there must be some suggestion or motivation, either in references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references, or to combine reference teachings. The suggestion to make the claimed combination and a reasonable expectation of success must be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20, USPQ2d 1438 (Fed. Cir. 1991). MPEP §2143.01 goes on to state that the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.

The current basis for rejection is the contention set forth in the Office Action that it would have been obvious to modify either Nishimura et al. '300 or Nishimura et al. '592 to use a face panel with a substantially rectangular shape in order to simplify the manufacture of the air bag cushion. Applicants must respectfully disagree since the proposed substitution of a rectangular face panel for the substantially oval face panel (1) in Nishimura et al. '300 or the elongated hexagonal lobed face panel (3) in Nishimura et al. '592 would appear to render the air bag cushions of those references non-operational absent a substantial corresponding modification of the geometry of the body panels.

As best understood, Nishimura et al. '300 relies upon a mating seamed relation between circular arc portions of the face panel (1) and the body panels (2 and 3). While different oval shapes for face panels are illustrated in FIGS. 3-5, they all nonetheless utilize the nearly circular arc parts that are seamed to corresponding curved edges in the body panels. If a rectangular face panel were substituted into this construction, the edges would no longer match since one would be attempting to join curved and straight edges. The difficulties in attempting to join such dissimilar edges could be substantial leading to undesirable puckering and/or gas leakage. Such characteristics would likely render the cushion unsuitable for its intended use. Even if it were possible to somehow modify the body portions to mate more readily with a rectangular face, Applicant respectfully submits that such a complete redesign is outside the bounds of obviousness. Finally, even if the proposed substitution of a square face for the oval face were made, the benefit proposed by the Office Action of sewing a square shape rather than a curved shape would not be realized since the curved edges of the body panels (2 and 3) would presumably still have to be sewn to the face. Thus, the cushion would have to be redesigned without realizing any benefit. Under such circumstances Applicant must respectfully submit that the art of record does not support a *prima facie* case of obviousness,

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that such a proposed combination of references is based on improper hindsight and is taught away from by the references, and that the outstanding rejection should be withdrawn. Court decisions criticizing improper use of hindsight are legion:

"[D]ecomposing an invention into its constituent elements, finding each element in the prior art, and then claiming that it is easy to reassemble these elements into the invention, is a forbidden *ex post* analysis." *In re Mahurkar Patent Litigation*, 831 F. Supp. 1354, 28 USPQ2d 1801 (N.D. Ill. 1993).

As regards the proposed modification of Nishimura et al. '592, Applicant respectfully notes that the body panel sections (1 and 2) are not configured to mate with the edges of a square face panel as proposed by the Office Action. In particular, each of the body panel sections has three boundary edges for mating with edges of a hexagonal lobed face panel. Thus, if a four sided face panel is used instead of the hexagonal lobed face panel of the primary reference, it appears that at least one edge of each body panel would have no corresponding joining edge thereby allowing gas to escape. Even if the proposed substitution of a square face for the hexagonal lobed face were made, the benefit proposed by the Office Action of sewing a square shape rather than a curved shape would not be realized since the curved edges (1S and 2S) of the body panels (1 and 2) would presumably still have to be sewn to the face. Thus, absent some additional modification to the body panels which is not contemplated by the Office Action, the proposed modification does not appear to lead to any reduction in curved seaming. In this situation the cushion would have to be redesigned without realizing any benefit. Under such circumstances Applicant must respectfully submit that the art of record does not support a *prima facie* case of obviousness, that such a proposed combination of references is based on improper hindsight and is taught away from by the references, and that the outstanding rejection should be withdrawn.

Moreover, Applicant respectfully submits that the Examiner has not shown any teaching within the references to combine elements in the manner suggested by the Examiner. The record is totally devoid of such evidence showing any motivation to combine the references in the manner suggested. Combining reference teachings is improper unless the prior art contains some suggestion of the proposed combination.

The motivation to modify the prior art must flow from some teaching in the art that suggests the desirability or incentive to make the modification needed to arrive at the claimed invention. See *In re Napier*, 55 F.3d 610, 613, 34 U.S.P.Q.2d 1782, 1784 (Fed. Cir. 1995) ("Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination."); accord *In re Geiger*, 815 F.2d 686, 688, 2

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U.S.P.Q.2d 1276, 1278 (Fed. Cir. 1987); *In re Laskowski*, 871 F.2d 115, 117, 10 U.S.P.Q.2d 1397, 1399 (Fed. Cir. 1989) ("[t]he mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification" (quoting *In re Gordon*, 733 F.2d 900, 902, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984)); *Sentex Systems, Inc. v. Elite Access Systems, Inc.*, 1999 U.S. App. LEXIS 3846 at *17 ("to invalidate claimed subject matter for obviousness, the combined teachings of the prior art references must suggest, expressly or by implication, the improvements embodied by the invention.").

"[T]he PTO erred in rejecting the claimed invention as an obvious combination of the teachings of two prior art references when the prior art provided no teaching, suggestion or incentive supporting the combination." *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). "[A] challenger to the validity of a patent 'cannot pick and choose among the individual elements of assorted prior art references to recreate the claimed invention;' the challenger 'has the burden to show some teaching or suggestion in the references to support their use in the particular claimed combination.'" *Smithkline Diagnostics, Inc. v. Helena Laboratories Corp.*, 859 F.2d 878, 887, 8 USPQ2d 1468, 1475 (Fed. Cir. 1988).

Finally, the suggestion that it would be obvious to combine prior art references in order to support a 103 rejection becomes less plausible when the necessary elements can only be found in a large number of references.

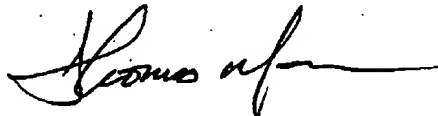
Conclusion

For the above reasons, Appellant respectfully requests the Appeal Board to reverse the decision of the examiner. In the event that there are additional fees associated with the submission of these papers, Applicant hereby authorizes the Commissioner to withdraw those fees from our Deposit Account No. 04-0500. Also, in the event that additional time is required to have the papers submitted herewith for the above referenced application to be considered timely, Applicant hereby petitions for any additional time required to make these papers timely and authorization is hereby granted to withdraw any additional fees necessary for this additional time from our Deposit Account No. 04-0500.

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Respectfully Submitted,



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